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# In the Supreme Court of the United States

**OCTOBER TERM, 1947.**

# No. 663.

UNITED STATES OF AMERICA,
*Petitioner,*

vs.

THE COLD METAL PROCESS COMPANY, ABRAM P. STECKEL AND THE UNION NATIONAL BANK OF YOUNGSTOWN, OHIO, TRUSTEE OF THE LEON A. BEEGHLY FUND,
*Respondents.*

## BRIEF OPPOSING PETITION FOR REHEARING.

The petition for rehearing should be denied for the reasons advanced in opposition to the Petition for Certiorari and because (1) it fails to comply with Rule 33 of this Court, and (2) it presents no substantial reason why this Court should grant certiorari to review the concurrent findings and conclusions of the Courts below. In the instant petition, as in the Petition for Certiorari and in the Courts below, petitioner has distorted the facts and ignored the findings unacceptable to it, as well as the substantial evidence upon which those findings and conclusions were based. As the Court of Appeals said (I:282):

> "But appellant's [now petitioner's] contentions repeatedly ignore the findings and the substantial evidence upon which they are based."

Although petitioner asserts that it "accepts the facts as found" by the lower Courts, the fact is that its entire petition amounts to a challenge of those findings and a charge that they were incomplete. The Court of Appeals, however, properly held that the findings of the District

Court were "complete, responsive to and amply supported by the record" (I:282). Petitioner also complains that the inferences drawn by the Courts below were wrong; but petitioner's contentions are based upon a distortion of the facts and a disregard of facts which destroys the inferences that it seeks to draw.

## I. The Petition Fails to Comply with Rule 33.

The petition obviously does not comply with the first ground for rehearing set forth in Rule 33 since it alleges no "intervening circumstances." Nor does it comply with the second ground for rehearing, since it fails to set forth any "substantial grounds available to petitioner although not previously presented." The grounds alleged were not only available to petitioner but were presented in the original Petition for Certiorari.

### A. *As to Ground 1 of the Petition.*

The original petition (p. 32) points out that it is only in a suit brought by the United States that patents can be cancelled on the ground of fraud or mutual mistake, and cites the *Bell Telephone* cases.[1] Having once litigated those factual issues, it is too plain for argument that no further suit based on the same charges and factual situation could be maintained by the United States. This situation must have been perfectly apparent to the Court when it denied the Petition for Certiorari and thereby refused to review the purely factual situation presented in this case on which the courts below were unanimous.[2]

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[1] Those cases were cited with approval and followed in this Court's decision in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U. S. 238.

[2] The denial of the petition in the case at bar is in full accord with the principles stated and the cases cited at pages 3, 4 and 8 of respondents' original brief herein.

B. *As to Ground 2 of the Petition.*

The supposed importance of the issues here presented to the Patent Office, the public and those involved in infringement cases was presented in the original petition at pages 22-26, and 32-40. Those contentions were discussed and refuted in respondents' original brief at pages 4-6, 26-27, and 29-30. They have been "previously presented," and disposed of.

## II. The Petition Presents No Substantial Reason for Granting a Rehearing and Does Not Correctly or Fairly Present the Pertinent Facts.

A. *As to Ground 1 of the Petition.*

Petitioner's first point is patently unsound. In the first place the decision herein will not in itself preclude any private litigant who is sued for infringement from defending on the same charges as those relied on by petitioner, as well as on all other defenses available in infringement actions. This would be equally true after a decision by this Court favorable to respondents. In the second place, unlike the situation in the *Schriber-Schroth* and *Muncie Gear* cases,[3] there is no concentration of the rolling industry or the litigation on these patents in the Sixth Circuit. The rolling industry extends throughout the country, the patents have already been litigated in the Third Circuit,[4] and infringement cases are now pending in the First, Third, Fourth, Sixth and Seventh Circuits. In the third place, the decision in this case will not in itself

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[3] *Schriber-Schroth Co. v. Cleveland Trust Co.*, 305 U. S. 47, 50 (1938); *Muncie Gear Works v. Outboard Co.*, 315 U. S. 759, 765-6 (1942).

[4] *Cold Metal Process Co. v. United Engineering & Foundry Co.*, 3 F. Supp. 120, 68 F. 2d 564, cert. den. 291 U. S. 675; *Cold Metal Process Co. v. Carnegie-Illinois Steel Corporation et al.*, 108 F. 2d 322, cert. den. 309 U. S. 665. In both of these cases the charges of fraud now relied upon as to patent '195 were strongly urged upon this Court in the petitions for certiorari which were denied.

be *res judicata* in any private litigation even in the courts of the Sixth Circuit.

Petitioner seeks to create prejudice and magnify the importance of the case to the United States, by referring to its potential liability under the 1910 Act and to the pending proceedings under the Royalty Adjustment Act. If private infringers should succeed in shifting to the United States a part of their liability for infringement, the United States, in any suit which may be filed by respondents in the Court of Claims under the 1910 Act, would have available to it all of the usual defenses in patent infringement cases. In the Royalty Adjustment litigation, respondents are merely trying to prevent the United States from appropriating royalties due from licensees to which respondents are entitled under lawful license agreements.

B. *As to Ground 2 of the Petition.*

This ground of the petition is fully covered in respondents' brief opposing certiorari (pp. 4-7, 26-7). Moreover, the entire argument presupposes that there was fraud, that material facts were withheld from the Patent Office, and that it was therefore misled. This is not the case. Both lower Courts held that the Patent Office had knowledge of the facts before issuing the patents. Any question as to the standard of conduct applicable to dealings with the Patent Office is wholly academic here in view of the express findings of the Courts below, fully supported by the record, that there was no fraud, misrepresentation or mistake.

## Conclusion.

We submit that the Petition for Rehearing should be denied.

Respectfully submitted,

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May 19, 1948.

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